

**CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
CALIFORNIA CAPITAL ACCESS PROGRAM (CalCAP)**

Meeting Date: August 20, 2013

***Consideration and Approval of Updates to the Collateral Support Program to be Administered
by the California Capital Access Program (CalCAP)***

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Summary. On February 17, 2011, CPCFA was awarded approximately \$84M in State Small Business Credit Initiative (SSBCI) funds by the U.S. Department of the Treasury (Treasury) to fund programs that help small businesses obtain capital. At the time of the award, only CPCFA's CalCAP was utilizing these funds as an approved participating State program. In March 2012, CPCFA requested Treasury approval to include a Collateral Support Program (CalCAP CS or the Program) to utilize a portion of the allotted SSBCI funds.

In May 2012, staff obtained CPCFA board approval, including proceeding with the adoption of emergency regulations, to begin administering the Collateral Support Program upon Treasury's approval. Subsequent to the May board meeting, CalCAP staff actively solicited stakeholder input on the CalCAP CS Program Summary. As a result of Treasury and stakeholder input, CalCAP staff requested and obtained board approval for various refinements to CalCAP CS in December 2012.

Treasury approved the launch of CalCAP CS effective January 17, 2013 and staff launched CalCAP CS statewide on January 28, 2013. Additional stakeholder input, as well as CalCAP CS staff experience enrolling loans, necessitated some refinements to the Program that were approved by the CPCFA board on June 18, 2013. Currently, staff is requesting additional enhancements described in this item to encourage lender comfort in the claims process for Collateral Support.

Background. The SSBCI funds awarded to California totaled approximately \$168M and are split evenly between CPCFA and the Governor's Office of Business and Economic Development ("GO-BIZ")¹. Funds were approved to facilitate CPCFA's Capital Access Program (CalCAP) and GO-Biz's Loan Guarantee Program. CPCFA and GO-Biz received an initial disbursement of \$55.6M, which is the first of three "tranches" of the State's award. Per SSBCI guidelines, 80% of the first disbursement to California must be utilized prior to the receipt of subsequent tranches of funds, meaning that CPCFA and GO-Biz together must meet this 80% requirement before either can receive additional funds. As of March 31, 2013, BT&H has reported using \$17,833,483.43 of its allotted funds and, CalCAP (including CalCAP CS) has used \$3,919,524.34 of its allotted funds. CalCAP continues to build on its progress through the enrollment of new lenders and expanded use by existing lenders. The recent refinements to the

¹ Prior to July 1, 2013, the funds administered by GO-BIZ for the Small Business Loan Guarantee Program were formerly administered by Business, Transportation, and Housing.

CalCAP Collateral Support Program realized immediate results; since March 31, CalCAP CS alone has expended or obligated an approximate additional [\$6,726,203]. Per the SSBCI Allocation Agreement, the SSBCI Program ends March of 2017. With broader participation in the Program through the inclusion of the additional guidance proposed here, CPCFA will be able to utilize the full allocation before its expiration.

Proposed Claim Guidance for Lenders. Staff reviewed claims instructions and/or guidance associated with other federal and state loan programs, and concluded that the preferred methods are contained in CPCFA's current statute and regulations. Attachment A contains descriptions of various guidance documents for the payment of claims available to CPCFA. Staff is proposing the approval of detailed instructions for the payment of claims in the Collateral Support Program Summary. A mark-up of the current CSP Summary illustrating these changes is provided as Attachment B.

- **Current Language Regarding Claims.**
Within 30 calendar days of collateral liquidation, the lender will submit a Collateral Support Claim Application, history of the account payments, a short narrative of the loan collection history, and information about the liquidation of collateral. CalCAP CS will evaluate the claim and authorize the disbursement of funds accordingly. The lender must return any recoveries to CPCFA.
- **Proposed Language.**
Within 30 calendar days of collateral liquidation, the lender will submit a Collateral Support Claim Application, history of the account payments, a short narrative of the loan collection history, and information about the sale of proceeds or justification for failed attempts to liquidate. State's collateral shall not be used in lieu of pledged collateral. All collateral must be liquidated consistent with the participating financial institution's usual method for loans that do not have the State's support. Lender may be reimbursed for: the amount of loan principal charge-off; reasonable out-of-pocket expenses incurred in pursuing its collection efforts including the preservation of collateral, and other related costs; and accrued and unpaid interest. Proper documentation of any claimed expenses shall be presented at the time of the claim. The amount paid on a claim will never exceed the available amount in the Collateral Support Loss Reserve account.

If subsequent to the payment of the claim the lender recovers from the borrower by any source, the lender may fully cover its loss and return any excess to CalCAP CS (not to exceed the total amount paid on the claim by CalCAP CS).

- **Impact on the Program.**
New lenders are currently expressing apprehension about using Collateral Support because of the lack of instruction on the payment of claims. Without clear guidance it may be difficult for the lenders to see the benefit of the Program at their institution. By providing more detailed instruction, increased confidence and participation in the Program can continue.

Agenda Item 4.B.

Staff Recommendation. Staff recommends the approval of the proposed instructions consistent with SSBCI standards and CPCFA statute and regulations to facilitate greater and more efficient utilization of the Federal funds and have a wider effect on the small business community of California.

Attachment A

Guidance for Claims

SSBCI

Small Business Jobs Act 2010

None.

SSBCI Regulations

None.

SSBCI Guidelines

None.

SSBCI FAQs

None.

SSBCI National Standards

None.

SSBCI Collateral Support Program Profile

- “In the event of default, a lender has the right to pursue all collateral but only has recourse to the state’s collateral after liquidating the borrower’s collateral.”
- “[The State] approves claims submitted by the lenders to release collateral upon default.”
- “[The lender] pursues recoveries of the borrower’s collateral before submitting a claim to the state.”

CA Amended Allocation Agreement (January 2013) to include Collateral Support

Section 4A (6) Loan Example

“In the event of a loan charge-off, the lender will liquidate the borrower’s collateral before filing a claim with CalCSP. When claims are filed, CalCSP will require a claim request form, history of the account payments, a short narrative of the loan, collection history, and information about the sale of proceeds or justification for failed attempts to liquidate. CalCSP will evaluate the claim and authorize the lender to disburse funds accordingly. Any recoveries after a claim is paid will be returned to the Program.”

Attachment A

Guidance for Claims

State of California

CPCFA Statute—Health and Safety Code, Section 44559.5

(a) The authority shall establish procedures under which financial institutions participating in the program established pursuant to this article may submit claims for reimbursement for losses incurred as a result of qualified loan defaults. A participating financial institution that charges off all or part of an enrolled loan to the loss reserve account may file a claim for reimbursement with the authority if both of the following conditions are met:

- (1) The claim occurs contemporaneously with the action of the participating financial institution to charge off all or part of the loan.
- (2) The charge off on an enrolled loan is made in a manner that is consistent with the participating financial institution's usual method for making determinations on business loans that are not enrolled loans.

(b) Costs for which a financial institution may be reimbursed from its loss reserve account include the amount of loan principal charged off, accrued interest on the principal, reasonable out-of-pocket expenses incurred in pursuing its collection efforts, including preservation of collateral, and any other related costs. Proper documentation of the expenses shall be presented at the time of the claim.

(c) If a participating financial institution files two or more claims contemporaneously, and there are insufficient funds in the reserve fund at that time to cover the entire amount of such claims, the institution may designate the order of priority in which the claims shall be paid.

(d) A financial institution may seek reimbursement of loan losses prior to the liquidation of collateral from defaulted loans. The financial institution shall repay its loss reserve account for any moneys received as reimbursement under this section if the financial institution recovers moneys from the borrower or from the liquidation of collateral for the defaulted loan, less any reasonable out-of-pocket expenses incurred in collection of such amount.

(e) In any case in which the payment of a claim under this section has fully covered a participating financial institution's loss on an enrolled loan, the participating financial institution shall assign to the authority, and to any applicable federal agency in the event federal matching funds are involved, any right, title, or interest to any collateral, security, or other right of recovery in connection with a loan made under the program.

(f) The executive director may adopt necessary rules for the authority to carry out its duties, functions, and powers relating to the program established pursuant to this article.

Attachment A

Guidance for Claims

CalCAP Regulations

§ 8074. Claim for Reimbursement.

(a) A Participating Financial Institution shall notify the Authority within 120 days after it has charged off all or part of a Qualified Loan as a result of a default.

(b) A Participating Financial Institution shall be authorized to make a claim for reimbursement of a loss from the enrolled portion of a Qualified Loan prior to the liquidation of collateral, or to realization on personal or other financial guarantees or from other sources. A Participating Financial Institution may also defer, for a period not to exceed 180 days from the date of the charge off, at its sole discretion, making a claim for reimbursement, but still must inform the Authority of charge off status within 120 days.

(c) The Authority shall pay claims within 30 days of receipt of a completed claim request; provided, however, that the Executive Director shall be authorized to reject a claim if it is determined that the representations and warranties provided by the Participating Financial Institution pursuant to Section 8072 at the time of enrolling the Qualified Loan were false. The Authority shall be authorized, upon providing written notice to the Participating Financial Institution, to defer payment of claims up to an additional 30 days if the Authority requires more information in order to determine if the claim shall be paid.

(d) Claim reimbursement shall not exceed the enrolled amount of the qualified loan or loans that form the basis for the claim, except when reasonable out-of-pocket expenses are claimed. In the event only a portion of the loan was enrolled, reimbursement of interest and out-of-pocket expenses will be limited to the ratio of the enrolled portion to the total loan amount.

(e) To make a claim, the Participating Financial Institution shall submit a claim form to the Authority which shall include the following information:

... (7) Amount of claim and breakdown of components of the claim between principal, interest, and reasonable out-of-pocket expenses of collection or preservation of collateral, accompanied by documentation of such expenses.

(8) Certification that notice was filed with the Authority as required by Section 8074(a) above within 120 days of the date the Participating Financial Institution charged the Qualified Loan off on its books, and certification that such charge off was made in a manner consistent with the Participating Financial Institution's usual methods for taking action on loans which are not enrolled as Qualified Loans under the Program.

(9) Statement whether the loan is secured, and whether the Participating Financial Institution has commenced enforcement proceedings.

Attachment A

Guidance for Claims

(10) If two or more claims are filed simultaneously by one Participating Financial Institution, a statement of the priority of payment of the claim compared to the other claims in the event the Loss Reserve Account is not sufficient to pay all claims.

(11) Statement whether the Qualified Loan qualifies under Section 8074(g).

(f) Except as provided in Section 8074(g) below, if a Qualified Loan suffers a loss and at the time of the Participating Financial Institution's claim there are insufficient funds in the Loss Reserve Account to cover the total amount of the claim, the Participating Financial Institution shall be able to withdraw all of the amount in the Loss Reserve Account at the time of the claim, to cover the loss to the fullest extent possible, but it shall thereafter not be eligible to obtain any further reimbursement relating to that claim.

(g) If a Qualified Loan suffers a loss, and at the time of the claim there is not enough money in the Loss Reserve Account to fully cover the loss, the Participating Financial Institution shall be able to withdraw all of the amount in the Loss Reserve Account at the time of the claim, to cover the loss to the fullest extent possible. If the Participating Financial Institution then continues making Qualified Loans under the Program and the Loss Reserve Account is replenished, the Participating Financial Institution shall be authorized to withdraw funds from the Loss Reserve Account at a subsequent time in order to fully cover the earlier claim, provided that the amount subsequently withdrawn to cover the earlier claim cannot exceed 75 percent of the amount in the Loss Reserve Account immediately prior to such subsequent withdrawal.

(h) If subsequent to the payment of a claim by the Authority, the Participating Financial Institution recovers from the Borrower, from liquidation of collateral or from any other source, amounts for which the Participating Financial Institution was reimbursed by the Authority, the Participating Financial Institution shall promptly pay to the Authority for deposit in the Loss Reserve Account, the amount received, net of reasonable and customary costs of collection, that in aggregate exceeds the amount needed to fully cover the Participating Financial Institution's loss on the Qualified Loan (including the portion of a Qualified Loan which is not enrolled in the Program). Recoveries which exceed reimbursements to the Loss Reserve Account may be retained by the Participating Financial Institution.

Attachment B

California Pollution Control Financing Authority

CalCAP Collateral Support

CalCAP Collateral Support (CalCAP CS) encourages banks and other financial institutions to make loans to small businesses that have difficulty obtaining financing. CalCAP CS pledges cash to cover the collateral shortfall of a loan in order to enable financing that otherwise might not be available to a small business.

Eligible Uses of Loan Proceeds

Loans can be used to finance the construction or renovation of buildings, the purchase of equipment, other capital projects, working capital, energy efficiency/environmental improvement projects, and bridge loans needed prior to obtaining permanent financing (including SBA 504 bridge loans). There are limitations on loan refinancing.

Ineligible Uses of Loan Proceeds

CalCAP CS prohibits financing of passive real estate, residential real estate, business acquisitions, any portion of a SBA loan, and those uses prohibited by the State Small Business Credit Initiative [guidelines](#).

Terms

CalCAP CS provides up to 40% of the loan value, in the form of a cash deposit, with the possibility of an additional 10% for businesses located in a [Severely Affected Community](#). The minimum loan amount is \$100,000, the maximum loan amount is \$20 million, and the maximum support amount is \$5 million per borrower. Lenders set all the terms and conditions of the loans. Loans can be short- or long-term, have fixed or variable rates, and bear any type of amortization schedule. The term of the support will be at the lender's discretion, not to exceed the original term of the loan or 7 years, whichever is less. Lenders are free to determine the amount of collateral support they wish to request and may also choose to reduce the collateral coverage at any time for any reason.

Eligible Lenders

Any federal or state-chartered bank, savings association, federally certified Community Development Financial Institution (CDFI), or credit union is eligible to participate in CalCAP CS. A lender must certify that it is in good standing with its regulatory body (Federal Reserve, Federal Deposit Insurance Corporation (FDIC), Comptroller of Currency, Thrift Supervision, National Credit Union Administration (NCUA), or state banking authority). Existing CalCAP lenders, who meet the above requirements, are already eligible to participate in CalCAP CS.

A Qualified Lender must sign the [Certification to Participate in Federal Fund](#) to participate in any Federally funded program and is required to abide by the assurances.

To become a participating lender in the CalCAP CS, submit [Financial Institution Application](#) and [Certification to Participate in Federal Fund](#) to CalCAP@treasurer.ca.gov.

Attachment B

Eligible Small Businesses

An eligible borrower must be in one of the industries listed in the [North American Industry Classification System \(NAICS\)](#) codes list, must not be prohibited by the State Small Business Credit Initiative [guidelines](#), and have fewer than 750 employees. The borrower must have their “Primary Economic Effect” in California where one of the following conditions exists: at least 51% of the total revenues of the business activity are generated in California; or at least 51% of the total jobs of the business are created or retained in California.

How to Request Collateral Support for a Loan

Prior to the issuance of a loan, a lender must submit a [Collateral Support Request](#) and a risk assessment of the borrower. The risk assessment includes: the value of the collateral based on the industry standard of measurement (e.g. appraisal); the lender’s valuation of the collateral; borrower’s risk rating; summary of relationship and history of the business; and the lender’s cash flow and financial analysis of the borrower. Once the request has been approved by the CPCFA Executive Director, a Collateral Support Approval will be sent to the lender. This commitment can be called upon for up to 90 business days after issuance. The Collateral Support Approval will include instruction from CalCAP CS that a loss reserve account be opened when the loan is finalized. This collateral support loss reserve account is owned by CPCFA. A separate account will need to be opened for each loan that is included in the Program.

Within 15 business days of the closing of the loan, the lender will submit the Collateral Support Approval with the final loan information and closing fees assessed according to Table A, notifying CalCAP CS that the loan has been funded. The SSBCI [Lender Certification](#) and [Borrower Certification](#) must be signed and submitted with the final loan information. The lender is required to give the borrower a [Privacy Notice](#). The final loan information must be accompanied by evidence the collateral support loss reserve account has been opened and applicable fees deposited. In turn, CalCAP CS’s trustee bank will wire the cash collateral support amount into the bank’s loss reserve account for each loan. The lender is required to provide a confirmation of receipt of funds.

Collateral Support Loan Loss Reserve Account

The Collateral Support Loan Loss Reserve Accounts are Interest Bearing Demand Deposit Accounts, owned by CPCFA, generally held at the lending institution, and specific to each loan. Non-depository financial institutions’ loan loss reserve account will be held at CalCAP CS’s trustee bank. In addition, the CPCFA Executive Director may require any account be held at the trustee bank.

The collateral support for each loan will be reduced annually according to the Incremental Recapture Schedule (Table B). The lender can also request a reduction in support at their discretion if they determine that the current level of support is no longer necessary.

The interest earned on the collateral support loss reserve account is the property of CPCFA and will be periodically swept.

Attachment B

Fees

TABLE A

<u>Original Term of Support</u>	<u>Energy Efficiency or Environmental Improvement</u>	<u>Bridge Loans</u>	<u>Small Business Loans</u>
≤ 12 months	0.50%	0.50%	0.50%
12.1 months - 24 months	0.75%	0.50%	0.75%
24.1 months - 36 months	2.00%	2.00%	2.00%
36.1 months - 48 months	2.75%	2.75%	2.75%
≥48.1 months	2.00% at closing and annually	2.00% at closing and annually	2.00% at closing and annually

A fee is charged at closing on the support amount for loans with an original term of up to 48 months. For loans with an original term greater than 48 months, a fee is charged at closing and annually on the support amount. The annual fee is charged in conjunction with the loan anniversary once the Incremental Recapture is taken. There is a minimum fee of \$1,000 for all loan terms at closing. Fees will not be charged on the Severely Affected Community portion of the support. For bridge loans, a fee of 0.5% will be charged on the support amount for requested extensions.

Incremental Recapture Schedule

TABLE B

Original Term of Support	Annual Review						
	1	2	3	4	5	6	7
0-12 Months							
12.1-24 Months	50						
24.1-36 Months	33.33	33.33					
36.1-48 Months	25	25	25				
48.1-60 Months	20	20	20	20			
60.1-72 Months	16.67	16.67	16.67	16.67	16.67		
72.1-84 Months	14.29	14.29	14.29	14.29	14.29	14.29	

*Inapplicable to bridge loans

Attachment B

-  equal to the percent of the original contribution amount
-  repayment of entire support upon support expiration

On an annual basis, in conjunction with the loan anniversary, a portion of the support will be returned to CPCFA according to the Incremental Recapture Schedule. The portion to be returned will be based on the original term of the support. However, bridge loans will experience the recapture once the balance of the loan is paid off or the related guarantee goes into effect. Any additional reductions requested by the lender will also be taken at this time. Once the Incremental Recapture is taken, the annual fee on collateral support commitments longer than 48 months will be charged on the remaining support.

Default and Charge-Off

Lender must submit a [Collateral Support Default Notification](#) upon loan default, or within 30 calendar days after the maturity of the support, in order to freeze further reductions from the support account and additional fees.

Within 30 calendar days of collateral liquidation, the lender will submit a Collateral Support Claim Application, history of the account payments, a short narrative of the loan collection history, and information about the sale of proceeds or justification for failed attempts to liquidate. State's collateral shall not be used in lieu of pledged collateral. All collateral must be liquidated consistent with the participating financial institution's usual method for loans that do not have the State's support. Lenders may be reimbursed for: the amount of loan principal charge-off; reasonable out-of-pocket expenses incurred in pursuing its collection efforts, including the preservation of collateral, and, subject to CPCFA written approval, other related costs; and accrued and unpaid interest. Proper documentation of any claimed expenses shall be presented at the time of the claim. The amount paid on a claim will never exceed the available amount in the Collateral Support Loss Reserve account.

If subsequent to the payment of the claim the lender recovers from the borrower by any source, the lender may fully cover its loss and return any excess to CalCAP CS (not to exceed the total amount paid on the claim by CalCAP CS).

Reporting and Records Retention

Lenders are required to send monthly bank statements to CalCAP CS by the 15th of the following month for all collateral support loss reserve accounts. All loan documents associate with loans enrolled in CalCAP CS are required to be retained until January 31, 2020.

**RESOLUTION OF THE
CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
APPROVING UPDATES TO THE COLLATERAL SUPPORT PROGRAM**

August 20, 2013

WHEREAS, the California Pollution Control Financing Authority (“Authority”) was created under the provisions of Section 44500 of the Health and Safety Code; and

WHEREAS, Article 8 (commencing with Section 44559) of Chapter 1 of Division 27 of the Health and Safety Code provides that the Authority is authorized to establish a Capital Access Program for Small Businesses (“CalCAP”); and

WHEREAS, Section 44519 of the Health and Safety Code provides that the Authority may employ an Executive Director and any other persons as are necessary to enable it to properly perform the duties imposed upon it by the Authority’s statutes; and

WHEREAS, the Authority received an award from the United States Treasury (“Treasury”) under the federal State Small Business Credit Initiative (“SSBCI”) to further the objectives of the Authority’s CalCAP, and for a Collateral Support Program funded by the SSBCI award; and

WHEREAS, the Authority has determined that detailed claim instructions (as more fully described in the August 20, 2013 staff report to the Authority) is necessary for the successful implementation of the program.

NOW, THEREFORE, BE IT RESOLVED by the California Pollution Control Financing Authority as follows:

Section 1. The Chair, Executive Director, or Deputy Executive Director of the Authority are hereby authorized and directed to take such actions to implement the detailed claims instructions into the Collateral Support Program to make or cause to be made such changes to the Regulations as may be required, and to execute and deliver any and all documents that they may deem necessary or advisable in order to effectuate the purposes of this Resolution.

Section 2. This Resolution shall take effect immediately upon its approval.